IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 75 OF 2002,

Anil Damu Murgaonkar, son of Damu Murgaonkar, major of age, Indian National, Government Servant, residing at H-F-29, Goa Housing Board, Durgawadi, Talegaon, Tiswadi, Goa.)...Petitioner

Versus

1. State of Goa, through the Chief Secretary of Government of Goa, having his office at Secretariat, Panaji, Goa.

2. The Secretary, Goa Public Service Commission, having its office at EDC House, Panaji.

3. Under Secretary, (Personnel) Department of Personnel, Secretariat, Panaji, Goa.

4. Kum. Fatarpekar Siddi M. through under Secretary, Department of Personnel, Secretariat, Panaji, Goa.

5. Joshi Upendra B. through under Secretary, Department of Personnel, Secretariat, Panaji, Goa.

6. Naik Goltekar Snehal P.)
through under Secretary,)
Department of Personnel,)
Secretariat, Panaji, Goa.)

7. Acharya Prasanna A.)
through under Secretary,)
Department of Personnel,)
Secretariat, Panaji, Goa.)

8. Volvoikar Vinayak P.)
through under Secretary,)
Department of Personnel,)
Secretariat, Panaji, Goa.)

9. Kum. Prabhudessai Meghna,)
through under Secretary,)
Department of Personnel,)
Secretariat, Panaji, Goa.)

10. Kum. Sawant Darshna D.)
through under Secretary,)
Department of Personnel,)
Secretariat, Panaji, Goa.)

11. Mandrekar Prashant,)
through under Secretary,)
Department of Personnel,)
Secretariat, Panaji, Goa.)

12. Narulkar Suresh N.)
through under Secretary,)
Department of Personnel,)
Secretariat, Panaji, Goa.)

13. Pednekar Maya M.)
through under Secretary,)
Department of Personnel,)
Secretariat, Panaji, Goa.)

14. Kum. Colaso Florina Sebastiao)
through under Secretary,)
Department of Personnel,)
Secretariat, Panaji, Goa.)

15. Ashutosh Ramchandra Apte,)
through under Secretary,)
Department of Personnel,)
Secretariat, Panaji, Goa.)

16. Parag M. Nagarcekar,)
through under Secretary,)
Department of Personnel,)
Secretariat, Panaji, Goa.)

17. Pradeep Shankar Naik,)
through under Secretary,)
Department of Personnel,)
Secretariat, Panaji, Goa.)

18. Bhushan Keshav Savoikar)
through under Secretary,)
Department of Personnel,)
Secretariat, Panaji, Goa.)

19. Kum. Sheru Appa Shirodkar,)
through under Secretary,)
Department of Personnel,)
Secretariat, Panaji, Goa.)

20. Kum. Varsha V. Mandrekar,)
through under Secretary,)
Department of Personnel,)
Secretariat, Panaji, Goa.)

21. Kum. Anju Shyam Vaigankar)
through under Secretary,)
Department of Personnel,)
Secretariat, Panaji, Goa.)

22. Gaurish Shankar Kuttikar)
through under Secretary,)
Department of Personnel,)
Secretariat, Panaji, Goa.)

23. Brijesh D. Manerkar,)
through under Secretary,)
Department of Personnel,)
Secretariat, Panaji, Goa.)

24. Kum. Nital B. Naik)
through under Secretary,)
Department of Personnel,)
Secretariat, Panaji, Goa.)

25. Gaurish Jayant Shankhwalkar,)
through under Secretary,)
Department of Personnel,)
Secretariat, Panaji, Goa.)

26. Mahadev J. Araundekar,)
through under Secretary,)
Department of Personnel,)
Secretariat, Panaji, Goa.)

27. Gomantak Bhandari Samaj)
representing Bhandari Naik)
community of Goa, through its)
President, Shri Murari Shamba)
Chopdokar, major in age,)
resident of Headland Sada,)
Vasco-da-Gama, Goa.)..Respondents

Mr. D.P. Bhose for the petitioner.
Mr. M.B. D'costa, Advocate General, with Mr. S. Vahidulla, Additional Government Advocate, for the State.
Mr. H.D. Naik for respondent No.2.
Mr. M.S. Sonak for respondent Nos. 4, 5, 6, 7, 8, 9, 12, 13, 14, 15 ,18, and 20 to 26.
Mr. Ranjit Satardekar for respondent No.10.
Mr. J.Godinho for respondent No. 19

WITH

WRIT PETITION NO. 115 OF 2002

Umesh Vassu Gaonkar, son of)
Vassu Gaonkar, major of age, Indian)
National, residing at House No. 79)
Ambdei, Village Sanguem, Goa.)... Petitioner.

Versus

1. State of Goa, through the Chief)
Secretary of Government of Goa,)
having his office at Secretariat,)
Panaji, Goa.)

2. The Secretary, Goa Public Service)
Commission, having its office at)
EDC House, Panaji.)

3. Under Secretary, (Personnel))
Department of Personnel,)
Secretariat, Panaji, Goa.)

4. Kum. Fatarpekar Siddi M.)
through under Secretary,)
Department of Personnel,)
Secretariat, Panaji, Goa.)

5. Joshi Upendra B.)
through under Secretary,)
Department of Personnel,)
Secretariat, Panaji, Goa.)

6. Naik Goltekar Snehal P.)
through under Secretary,)
Department of Personnel,)
Secretariat, Panaji, Goa.)

7. Acharya Prasanna A.)
through under Secretary,)
Department of Personnel,)
Secretariat, Panaji, Goa.)

8. Volvoikar Vinayak P.)
through under Secretary,)
Department of Personnel,)
Secretariat, Panaji, Goa.)

9. Kum. Prabhudessai Meghna,)
through under Secretary,)
Department of Personnel,)
Secretariat, Panaji, Goa.)

10. Kum. Sawant Darshna D.)
through under Secretary,)
Department of Personnel,)
Secretariat, Panaji, Goa.)

11. Mandrekar Prashant,)
through under Secretary,)
Department of Personnel,)
Secretariat, Panaji, Goa.)

12. Narulkar Suresh N.)
through under Secretary,)
Department of Personnel,)
Secretariat, Panaji, Goa.)

13. Pednekar Maya M.)
through under Secretary,)
Department of Personnel,)
Secretariat, Panaji, Goa.)

14. Kum. Colaso Florina Sebastiao)
through under Secretary,)
Department of Personnel,)
Secretariat, Panaji, Goa.)

15. Gomantak Bhandari Samaj,)
representing Bhandari Naik,)
community of Goa, through)
its President,)..Respondents

Mr. D.P. Bhose for the petitioner.
Mr. M.B. D'costa, Advocate General, with Mr. S. Vahidulla, Additional Government Advocate, for the State.
Mr. H.D. Naik for respondent No.2.
Mr. M.S. Sonak for respondent Nos. 4, 5, 6, 7, 8, 9, 12, 13 and 14.
Mr. Ranjit Satardekar for respondent No.10.

WITH

WRIT PETITION NO. 27 OF 2002

Sameer P. Sawant, son of Purushottam Sawant, major of age, Indian National, residing at House No. 678, Rambhuwan Wada, Kumbharjuva, Ilhas, Goa.)..Petitioner

Versus

1. State of Goa, through the Chief Secretary of Government of Goa, having his office at Secretariat, Panaji, Goa.

2. Director General of Police (DGP) having his office at Police Headquarters Panaji, Goa.

3. Deputy Inspector General of Police, (DIG), having his office at Police Headquarter, Panaji, Goa.

4. The Secretary, Social Welfare Department, Government of Goa, having his office at Secretariat, Panaji, Goa.)..Respondents

Mr. D.P. Bhise for the petitioner.
Mr. M.B. D'costa, Advocate General, with Mr. S. Vahidulla, Additional Government Advocate, for the State.

WITH

WRIT PETITION NO.68 OF 2002

Anil Damu Murgaonkar, son of Damu)
S. Murgaonkar, major of age, Indian)
National, Government servant, resident of)
Flat No. H-F-29 Goa Housing Board,)
Durgawadi, Talegao, Tiswadi Tal.)
Panaji, Goa.)..Petitioner

Versus

1. State of Goa, through the)
Chief Secretary of Govt. of Goa,)
having his office at Secretariat,)
Panaji, Goa.)

2. The Joint Secretary,)
Department of Personnel, Govt. of Goa,)
having his office at Secretariat,)
Panaji, Goa.)

3. The Secretary, Department of)
Social Welfare, Govt. of Goa,)
having his office at Secretariat,)
Panaji, Goa.)

4. The Secretary, Goa Public Service)
Commission, having its office at)
EDC House, Panaji, Goa.)

5. The Member Secretary,)
Goa State Commission for Backward)
Classes, having its office at Goa Medical)
Complex (old), Panaji, Goa.)

6. Mandrekar Prashant,)
through Under Secretary, Department)
of Personnel, Government of Goa,)
having his office at Secretariat,)
Panaji, Goa.)

7. Kum. Pednekar Maya M.,)
through Under Secretary, Department)
of Personnel, Government of Goa,)
having his office at Secretariat,)
Panaji, Goa.)

8. Gomantak Bhandari Samaj,)
representing Bhandari Naik,)
community of Goa, through its)
President, Shri Murari Shambhu)
Chopdekar, major in age, resident of)
Headland, Sada, Vasco-da-Gama, Goa.)..Respondents

Mr. D.P. Bhise for the petitioner.
Mr. M.B. D'costa, Advocate General, with Mr. S. Vahidulla, Additional Government Advocate, for the State.
Mr. M.S. Sonak for respondent Nos. 5 and 6.

WITH

WRIT PETITION NO. 72 OF 2002

Umesh Vassu Gaonkar, son of)
Vassu Gaonkar, major of age, Indian)
National, Advocat,e resident of House No.79,)
Village Ambedi, Tal. Sanguem, Goa.)..Petitioner.

Versus

1. State of Goa, through the)
Chief Secretary of Govt. of Goa,)
having his office at Secretariat,)
Panaji, Goa.)

2. The Joint Secretary,)
Department of Personnel, Govt. of Goa,)
having his office at Secretariat,)
Panaji, Goa.)

3. The Secretary, Department of)
Social Welfare, Govt. of Goa,)
having his office at Secretariat,)
Panaji, Goa.)

4. The Secretary, Goa Public Service)
Commission, having its office at)
EDC House, Panaji, Goa.)

5. The Member Secretary,)
Goa State Commission for Backward)
Classes, having its office at Goa Medical)
Complex (old), Panaji, Goa.)

6. Mandrekar Prashant,)
through Under Secretary, Department)
of Personnel, Government of Goa,)
having his office at Secretariat,)
Panaji, Goa.)

7. Kum. Pednekar Maya M.,)
through Under Secretary, Department)
of Personnel, Government of Goa,)
having his office at Secretariat,)
Panaji, Goa.)..Respondents

Mr. D.P. Bhise for the petitioner.
Mr. M.B. D'costa, Advocate General, with Mr. S. Vahidulla, Additional Government Advocate, for the State.
Mr. H.D. Naik for respondent No.2.
Mr. M.S. Sonak for respondent Nos. 5 and 6.

WITH

WRIT PETITION NO. 77 OF 2002

Sameer P. Sawant, son of Purushottam Sawant, major of age, Indian National, residing at House No. 678, Rambhuwan Wada, Kumbharjuva, Ilhas, Goa.)..Petitioner

Versus

1. State of Goa, through the Chief Secretary of Government of Goa, having his office at Secretariat, Panaji, Goa.

2. Director General of Police (DGP) having his office at Police Headquarters Panaji, Goa.

3. Deputy Inspector General of Police, (DIG), having his office at Police Headquarter, Panaji, Goa.

4. The Secretary, Social Welfare Department, Government of Goa, having his office at Secretariat, Panaji, Goa.

5. The Member Secretary,)
Goa State Commission for Backward)
Classes, having its office at Goa Medical)
Complex (old), Panaji, Goa.)

6. Gomantak Bhandari Samaj,)
representing Bhandari Naik,)
community of Goa, through its)
President, Shri Murari Shambhu)
Chopdekar, major in age, resident of)
Headland, Sada, Vasco-da-Gama, Goa.)..Respondents

Mr. D.P. Bhise for the petitioner.
Mr. M.B. D'costa, Advocate General, with Mr. S. Vahidulla, Additional Government Advocate, for the State.
Mr. M.S. Sonak for respondent No.5.

CORAM: DALVEER BHANDARI, C.J., &

N. A. BRITTO, J.

DATED: APRIL 18, 2005.

JUDGMENT (Per Dalveer Bhandari, C.J.):

1. These petitions raise similar questions of law. Therefore, we deem it appropriate to decide these petitions by a common judgment.

2. Brief facts incorporated in the aforementioned petitions are briefly recapitulated as under:-

3. Writ Petition No.75 of 2002

3.1 According to the petitioner, the sanctioned strength of the posts of Mamlatdar in the Personnel Department is 39 and this sanctioned strength is likely to be increased. The Personnel Department has requisitioned 11 posts of Mamlatdar and the Goa Public Service Commission (for short "GPSC") has advertised 7 posts to be filled in General Category, three are to be reserved for Other Backward Class (OBC) and one for the children of freedom fighters. The advertisement states that 10 vacancies are likely to occur, out of which 6 will be reserved for General Category and 4 for Other Backward Classes. It is also stated that the petitioner belongs to other Backward Class of Gawdai caste/community and has applied to the GPSC for the post of Mamlatdar and requested to consider him in the OBC category. According to the petitioner, he has satisfied all the

eligibility conditions and as such he was called for the interview. The petitioner has prayed that the State Government and the Personnel Department be directed to reserve 12 posts of Mamlatdar for the OBCs out of 49 sanctioned strength of Mamlatdar in all the 27 point in 100 point roster notified by the State Government by notification dated 30th June, 2000. The petitioner is further seeking a direction from this Court to quash the orders dated 15th February, 2002, 17th April, 2002, 31st July, 2002 and 14th January, 2003. According to the petitioner, respondent Nos. 4 to 26 have been appointed against the reserved roster point.

3.2 A preliminary objection has been taken by the State that this petition is not maintainable as the petitioner himself appeared for the interview and has not been selected against the post of Mamlatdar. The petitioner is, therefore, not entitled to challenge the appointment of respondent Nos. 4 to 26. In addition, the petitioner has not made any representation to the Government. The petitioner has not

explained the reason for the delay in filing the present writ petition. In the reply it is also mentioned that the petition is liable to be dismissed only on the ground of laches.

4. **Writ Petition No. 115 of 2002**

4.1 The facts of this case are exactly identical to the facts in Writ Petition No. 75 of 2002. The petitioner has incorporated similar prayers in this writ petition and has prayed that respondent Nos. 1 to 3 be directed not to give appointment to respondent Nos. 4 to 14 to the posts of Mamlatdar. In this case also, the petitioner has applied for considering him for one of the three reserved posts of OBC which application was received by the GPSC. The petitioner was invited to appear for the written test and thereafter called for an oral interview. He has not been selected to the said post. Being aggrieved by the non-selection, the petitioner has preferred this petition. It may be pertinent to note that the State has not filed any reply to this petition.

5. **Writ Petition No. 27 of 2002**

5.1 The facts of this case are that the sanctioned strength of the post of Police Sub-Inspector in the Police Force is 149. The State Government is implementing 27 per cent reservation of posts in the direct recruitment to Other Backward Classes and has reserved 27 points in the 100 point roster. The sanctioned strength of posts being 149, it is necessary to reserve total of 39 posts of PSI in the Police Force. However, the Police Department has reserved only 14 posts for Other Backward Classes and one each for the children of freedom fighters, ex-servicemen, Scheduled Castes and Sportsmen. The Petitioner challenges non-implementation of the reservation for Other Backward Classes while filling 53 posts of P.S.I in the Police Force.

5.2 The petitioner's name was sponsored by the Employment exchange for the post of Police Sub-Inspector. The petitioner

has filled in the application form giving all details required by the Police Department. The petitioner has successfully gone through the tests but the result is awaited. The petitioner, through this petition, has sought direction to reserve 39 posts of PSIs for the OBCs in the sanctioned strength of 149 posts in accordance with the 27 roster point in 100 point roster notified by the State Government.

5.2 An affidavit in reply was filed by Mr. A.K. Singh, I.P.S., Superintendent of Police. According to the deponent, the cadre strength of PSI is 152, out of which 149 posts are to be filled by male candidates and 3 by female candidates. According to the recruitment rules for the post of PSI, 50 per cent of the total posts are to be filled by direct recruitment and 50% of the posts are to be filled by promotion from amongst ASIs having requisite qualifications. Thus, 76 posts are to be filled by promotion and 76 posts by way of direct recruitment. 31 vacancies arose on account of promotion/retirement in PSI cadre. The advertisement to fill up these 31 posts was

published. Out of these 26 posts, 9 posts are reserved for OBCs i.e. 8 male candidates and one female candidate. Thus the action of the respondents in filling 31 vacancies in the post of PSI is in accordance with the notification dated 30th June, 2000 as well as in consonance with the law laid down by the Apex Court in various judgments.

6. **Writ Petition No. 68 of 2002**

6.1 Pursuant to the advertisement published by the GPSC, the petitioner made an application for considering him for one of the posts out of three posts of Mamlatdar reserved for OBCs. The petitioner appeared for the test and interview. According to the petitioner, respondent Nos. 6 and 7 were selected against 2 posts reserved for OBCs. The petitioner, therefore, prayed for quashing and setting aside the selection of respondent Nos. 6 and 7.

6.2 An affidavit in reply was filed by A.K. Wasnik, Director of Social Welfare. In the said reply, it is stated that the petitioner has no locus standi as the petitioner himself appeared for the interview and has not been selected. It is stated that the petitioner is not entitled to challenge the appointments of respondent Nos. 6 and 7 after the petitioner's failure to qualify for the post. The petitioner has not made any representation before the State Government. On all these grounds it is prayed that the petition is liable to be rejected.

7. **Writ Petition No. 72 of 2002**

7.1 The facts of this case are identical to the facts in Writ Petition No. 68 of 2002. In this petition also the petitioner has sought the similar prayers.

7.2 An affidavit in reply is filed by Director of Social Welfare, Govt. of Goa, raising preliminary objections as were raised in the above petitions.

8. **Writ Petition No. 77 of 2002**

8.1 In this case also the facts are also identical in Writ Petition No. 72 of 2002.

8.2 A reply affidavit has been filed by the President of Respondent No.6-Samaj submitting that the petition is not maintainable as the same is barred by the principles of res judicata or the principles analogous to res judicata. It is incorporated therein that the petitioner is seeking to claim illusory, eventual, hypothetical, far fetched and imaginary rights for himself and members of some other notified OBC communities and as such he has no cause of action to maintain the present petition.

9. In all these petitions, the petitioners have prayed similar relief of quashing and setting aside the order dated 16th November, 1999 of the Goa State Commission for Backward

Classes ("the Commission" for short) advising for inclusion of "Bhandari Naik" in the State List of Other Backward Classes and consequently to quash Item No.9 "Bhandari Naik" of the notification No. 13/1/97-SWD/1016 dated 30th June, 2006. The petitioners have also sought a direction to implement the principle laid down in Constitutional Bench decision of the Hon'ble Supreme Court in the case of R.K. Sabrawal vs. State of Punjab, (1995) 2 SCC 745.

10. It is the common stand of the respondents that the petitioners have not explained the delay in filing the petitions. The petitioners have not filed any representation to the Government challenging the non-selection to the posts to which they applied for. In the notification dated 30th June, 2000, the Government has included 9 different communities of OBCs. In all these petitions, the petitioners have not made any averments except Bhandari-Naik. The petitioners have not joined persons from Bhandari Naik who have obtained benefits of OBC. According to the respondents, the Government has

accepted and recommended inclusion of Bhandari Naik in the State List of OBC. According to the respondent-State, the petitioners are seeking to re-open the findings given by the Commission which were confirmed by this Court and the Supreme Court.

11. The learned counsel appearing for the respondents have taken preliminary objection regarding maintainability of these petitions. They placed reliance on a Division Bench judgment of this Court delivered in Writ Petition No. 13 of 1997 (*Shir Mangaldas K. Desai vs. State of Goa and Ors.)*. The Division Bench observed that petitioner having made application pursuant to the advertisement, it is not open for the petitioner now to challenge the advertisement and the process of appointment on the ground that no such advertisement could be issued since there was no vacant post or permanent sanctioned strength. This conclusion of Division Bench has arrived at on the principle that once a candidate has appeared pursuant to

an advertisement and if he is not selected later on, he is prevented from challenging the selection process.

12. The learned counsel further placed reliance on a decision of the Apex Court in *Om Prakash Shukla vs. Akhilesh Kumar Shukla and Ors.*, 1986 (Supp) SCC 285. In this case also, Their Lordships of the Supreme Court have observed that the petitioner therein had appeared for the examination without protest. The petitioner filed the petition only after he had perhaps realized that he would not succeed in the examination. The High Court examined this issue and observed that the setting aside of the results of examination held in the other districts would cause hardship to the candidates who had appeared there and he cannot be permitted to challenge the said examination.

13. In *Madan Lal and others vs. State of J & K. and others*, (1995) 3 SCC 486, their Lordships observed that the petitioners took a chance to get themselves selected at the oral interview.

Only because they did not find themselves to have emerged successful as a result of their combined performance both at the written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted.

14. The same principle has been reiterated by the Apex Court in *Suneeta Aggarwal* vs. *State of Haryana and Others,* (2000) 2 SCC 615. The Court observed that the appellant having appeared before the Selection Committee without any protest and having taken a chance, the appellant is estopped by her conduct from challenging the earlier order of the Vice-Chancellor. Thus the High Court was justified in refusing to accord any discretionary relief in favour of the appellant.

15. In *G.N. Nayak* vs. *Goa University and others*, (2002) 2 SCC 712, while following the earlier judgments of the Supreme Court, Their Lordships of the Supreme Court observed that the petitioner knew that there was a change in the eligibility criteria for the post yet he applied for the post and appeared at the interview without protest. He cannot be allowed to now contend that the eligibility criteria were wrongly framed.

16. In *Chandra Prakash Tiwari and others* vs. *Shakuntala Shukla and others*, (2002) 6 SCC 127, Their Lordships observed that it is well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not "palatable" to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process.

17. In view of the consistent legal position as crystalised in the aforementioned cases of the Apex Court, in our considered view, any candidate who appears in the examination or

interview without protest, later on cannot be permitted to turn round and assail the entire selection process. In this view of the matter, the preliminary objection raised by the Respondents has to be accepted.

18. In the result, all the aforementioned writ petitions, being devoid of any merit, are accordingly dismissed. In the facts and circumstances, the parties are directed to bear their own costs.

CHIEF JUSTICE

N.A. BRITTO,J.